

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WINSTON IRVING,

Plaintiff,

- against -

NOTICE OF MOTION

07 Civ. 6075 (CM)

THE CITY OF NEW YORK and THE POLICE
DEPARTMENT OF THE CITY OF NEW YORK; P.O.
JOSEPH GARTNER, whose shield number is 1796, JOHN
DOE, RICHARD ROE, SAMUEL WOE and others whose
true names and shield numbers are presently unknown,

Defendants.

-----X

PLEASE TAKE NOTICE that, upon a declaration, exhibits and accompanying memorandum of law, defendant Joseph Gartner will move this Court before the Honorable Colleen McMahon, United States District Judge, at the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York, at a date and time to be determined by the Court, in accordance with Honorable Colleen McMahon's individual practices, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the grounds that defendant Joseph Gartner is entitled to qualified immunity on some or all of plaintiff's claims and for such other and further relief as the Court deems just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that such motion will be submitted

within thirty (30) days of the filing and serving of this Notice of Motion.

Dated: New York, New York
July 25, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City, NYPD and Gartner
100 Church Street
New York, New York 10007
(212) 788-0906

By: /s/
SHAWN D. FABIAN (SF4606)
 Assistant Corporation Counsel
 Special Federal Litigation Division

To: Michael W. Warren, Esq. (By First Class Mail)
Michael W. Warren, P.C.
Attorney for Plaintiff
580 Washington Avenue
Brooklyn, New York 11238

DECLARATION OF SERVICE BY MAIL

I, SHAWN D. FABIAN, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that on July 25, 2007, I served the annexed **NOTICE OF MOTION** upon the following counsel for plaintiff by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said counsel for plaintiff at the address set forth below, being the address designated by said counsel for plaintiff for that purpose:

Michael W. Warren, Esq.
Michael W. Warren, P.C.
580 Washington Avenue
Brooklyn, New York 11238

Dated: New York, New York
July 25, 2007

/s/

SHAWN D. FABIAN
ASSISTANT CORPORATION COUNSEL

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THE CITY OF NEW YORK, et al.,

Defendants.

NOTICE OF MOTION

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York
Attorney for Defendants City, NYPD and
Gartner
100 Church Street
New York, New York 10007

Of Counsel: Shawn D. Fabian
Tel: (212) 788-0906
NYCLIS No. 2007-020573

Due and timely service is hereby admitted.

New York, N.Y., 2007 . . .

..... Esq.

Attorney for